IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO.1531 OF 1993

Kundlik Pandurang Patil & ors. Petitioners
Vs.
State of Maharashtra & ors. Respondents

Mr.R.S.Datar for petitioners.
Mrs.S.S.Bhende, AGP for Resp.Nos.1 and 2.
None for resp.no.3.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

April 10, 2006.

P.C.

1. The petitioners by invoking extra ordinary powers under Article 226 of the Constitution have brought in question the order dated 25/12/1992 passed by the Settlement Commissioner, Directorate of Land Records, Maharashtra State at Pune. By the said order the entries in the revenue records i.e. 7/12 extract in respect of the agricultural land located in Survey No.351/1&2 has been corrected by invoking the powers under Section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

2. The petitioners claim that they are the owners of the land which is now Gat No.920 and the power invoked under Section 31-A of the Act while passing the impugned order is beyond limitations and they

being the owners of the land the said order could not have been passed unless they were heard. In support of the challenge to the impugned order the petitioners have relied upon the decisions of the Apex Court in the case of State of Gujarat v. P. Raghav **[AIR 1969 SC 1297]** and Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim **[(1997) 6 SCC 71]**. They have also relied upon the Division Bench decisions of this Court in the case of Mallappa Guruppa Chaugule v. Padmanna Omanna Sajane & ors. **[1980 Mh.L.J. 377]** and Gulabrao Bhaurao Kakade, through LRs. v. Nivrutti Krishna Bhilare **[2001 (4) Mh.L.J. 31]**.

3. The Asst. Settlement Commissioner at Pune has filed affidavit-in-reply and at the first instance it has been pointed out that the petitioners cannot claim the ownership right in the subject land which was a village property and the petitioners' grand father being the eldest citizen in the village at the relevant time, the land which was for the common usage of the village was shown in his name and it was the property of the village panchayat. The 7/12 extracts right from 1957-58 to 1968-69 and thereafter till 1981-82 do suggest that the subject land was the village property and it was not any person's

individual property as such including the petitioners' grandfather Shri Pandurang Patil.

4. On the scheme under the Act having been implemented entries in the 7/12 extracts were carried out but inadvertently in the half column the officer concerned did not, in the record of rights, record that the land was for the usage of the entire village though it was standing in the name of the petitioners' grandfather. On noticing this lapse the competent authority corrected the 7/12 extracts with the entry "This land is for the usage of the entire village (Ya jaminicha upayog sarva gavche lokani ghenecha aahe)". The affidavit further states that Shri Sakharam Shiva Patil and other five residents of village Kole had submitted an application to the Deputy Director of Land Records, Pune Region on 3/3/1992 and the Asst. Consolidation Officer-II, Kolhapur, who is the competent authority, enquired into the said application as well as visited the village on 21/9/1992 and carried out the inspection of land in Gat No.920 in the presence of a large number of khatedars. He sought to record the statements of the petitioners in the presence of the villagers but the petitioners refused to give their

statements but filed a written statement on 30/9/1992. In addition about 450 khatedars, who were present during the inspection, also submitted their written say. The Asst. Consolidation Officer-II, Kolhapur considered all these statements and noted that there was clerical mistake or omission which required to be corrected by invoking the powers under Section 31-A of the Act. It is clear that the scheme has not been varied and, therefore, the issue of limitation will not be applicable as has been argued by the learned counsel for the petitioners. All along the subject land was recorded and in fact reserved for the usage of the entire village but was shown in the name of the petitioners' grandfather, he being the eldest member of the village. The petitioners cannot claim any right of ownership on the subject land and the disputed questions of fact raised by the petitioners cannot be gone into in a writ petition. We have noted that Regular Civil Suit No.468 of 1981 has been filed by the village panchayat and some of the petitioners are impleaded as defendants (Bhagwant Patil as well as the original petitioner no.4-Dattatraya Pandurang Patil).

5. This petition, therefore, fails and the same

is hereby dismissed. The suit pending and filed by the village panchayat shall be decided on its own merits.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)